

REMARKS

Reconsideration is respectfully requested.

The Examiner's remarks and cited references have been carefully considered and responsive thereto the applicant has amended claims 1, 3, 5-7, 10, 12-18, 23, 26, 27, 29-44 and has canceled claims 20-22 and 25.

The drawings were objected to by the Examiner for failure to show element 130 on Fig. 1, and for the inclusion of the arrow at the bottom of block 414 in Fig. 4. Responsive thereto, applicant is submitting herewith for the Examiner's approval a corrected copy of Figure 1 with the suggested change (the inclusion of reference numeral 130). With respect to the inclusion of the arrow at the bottom of block 414 in Fig. 4, applicant is also submitting herewith for the Examiner's approval a corrected copy of Figure 4 with the suggested change (removal of the noted arrow). Upon receiving the Examiner's approval, applicant will submit a formal corrected copy of the figures in question.

Claims 1-45 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to point out and distinctly claim the subject matter which applicant regards as the invention, more specifically, various terms in the claims lack a proper antecedent basis. Responsive thereto, applicant has amended the affected claims accordingly in the manner very helpfully suggested by the Examiner. With respect to the rejection of claim 14 (applicable to claims 17 and 29 as well), the Examiner was unclear as to what the incentive is. As stated in the claims the incentive is anything of value to the recipient, whether it is receiving something (e.g., reward) or not receiving something (e.g., a penalty) or vice versa. If after reviewing the present amendment the Examiner is still uncertain as to what the incentive encompasses then the applicant would be happy to discuss any suggested changes to clarify this. Applicant respectfully submits that applicant's claims now distinctly claim the subject matter which applicant regards as the invention and that this rejection now be withdrawn.

Claims 20-24 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Hagenbuch (US 5,754,965). Responsive thereto, applicant has canceled claims 20-22 and has amended claim 23 to include the limitations found in claim 25 (which the Examiner has indicated as being allowable). Applicant respectfully submits that claim

23 as now amended is in condition for allowance and that the rejection of claim 23 now be withdrawn.

Claim 7 was rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Taylor et al. (US 2002/0156666). The Examiner states that that it would have been obvious to one of ordinary skill in the art to determine the productivity of the machine so that the performance based contract and its terms would accurately reflect the productivity of the current machine and any replacement machine. However, applicant respectfully submits that Taylor fails to teach or suggest applicant's invention as claimed. Specifically, Taylor teaches a method in which a standard motor maintenance plan is selected based on the customer's budget and business plan (see Taylor, e.g., paragraph 0049). With respect to paragraph 0065 to which the Examiner refers, this paragraph merely states that if the maintenance program selected includes on-line service then the guaranty is related to the time to get the customer "on-line". However, Taylor fails to teach or suggest any method for generating a customer service agreement based on the productivity of the underlying "machine", as claimed by the applicant. For at least the reasons noted above, applicant respectfully submits that Taylor fails to teach or suggest applicant's invention as claimed and that this rejection now be withdrawn.

Claim 8 and 9 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Taylor et al. (US 2002/0156666), and further in view of Hagenbuch (US 5,754,965). However, in view of the fact that claims 8 and 9 depend on claim 7, applicant's remarks above regarding Taylor are again applicable here, and applicant respectfully submits that the combination of Taylor and Hagenbuch still fails to teach or suggest a method of determining a customer support agreement based on the productivity of the underlying "machine" and that this rejection now be withdrawn.

Claims 1, 3, 6, 10, 17, 18, 27, 29, 30, 33, 35, 39, and 42 were indicated by the Examiner as being allowable if rewritten or amended to overcome the rejections under 35 U.S.C. ¶112, second paragraph, as set forth above. As noted previously, applicant has made the necessary changes to these claims and allowance of these claims is respectfully requested. In addition, applicant has provided for the Examiner's review and consideration additional amendments to claims 1, 6, 7, 10, 16 and 18. Specifically, applicant has removed the words

In addition, applicant has provided for the Examiner's review and consideration additional amendments to claims 1, 6, 7, 10, 16 and 18. Specifically, applicant has removed the words "guaranteed" and "guaranteed productivity" as it relates to the customer support agreement in order to provide consistency between the claims and applicant's specification. Favorable consideration of these amendments is respectfully requested.

Claims 2, 4, 5, 11-16, 19, 25, 26, 28, 31, 32, 34, 36-38, 40, 41 and 43-45 were indicated by the Examiner as being allowable if rewritten or amended to overcome the rejections under 35 U.S.C. §112, second paragraph, as set forth above and to include all the limitations of the base claims and any intervening claims. The applicant has amended the claims accordingly to correct the rejections under 35 U.S.C. §112, second paragraph. In addition, claim 26 was rewritten as new independent claim 26 which now incorporates the limitations found in the original claims 23 and 26. Also, claim 23 was amended to include the limitations found in original claim 25. Although claim 24 was an intervening claim to claim 25, applicant respectfully submits that claim 24 is not required to provide any antecedent support to claim 25 and so was not included in amended claim 23. Favorable consideration of this deviation from the Examiner's requirement is respectfully requested. As noted previously, applicant has made the necessary changes to these claims and allowance of these claims is respectfully requested.

It is respectfully urged that the subject application is in condition for allowance and allowance of the application at issue is respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James R. Smith", is written over a horizontal line.

James R. Smith
Registration No. 41,318
Caterpillar Inc.

Telephone: (309) 636-1569
Facsimile: (309) 675-1236